



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sawadi Corporation

File: B-265740; B-265741

Date: December 21, 1995

Dennis M. Dayton, Esq., for the protester.

Newton L. Klements, Esq., Army Corps of Engineers, for the agency.

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DIGEST

Apparent low bids were properly rejected as materially unbalanced where the bids, which were for contracts to satisfy the same general mowing requirements for each of a 5-month base period and 4 option years, included a front-loaded base period price and did not become low until the third of 4 option years, thereby raising a reasonable doubt that the bids would result in the lowest actual cost to the government.

DECISION

Sawadi Corporation protests the rejection of the bids it submitted in response to invitation for bids (IFB) Nos. DACW31-95-B-0043 (IFB-0043) and DACW31-95-B-0044 (IFB-0044), issued by the Army Corps of Engineers for grass mowing services. The bids were rejected as materially unbalanced.

We deny the protests.

The solicitations requested offerors to provide per-acre unit prices for mowing specified areas for a base period of 5 months, with four 1-year option periods. For example, Item 0001AA of IFB-0043 requested a price for one mowing of one acre of an estimated total quantity of 546 acres in specific Type I areas during the base period, calculated as 39 acres per mowing, times an estimated 14 mowings, for a total of 546 acres to be mowed. The solicitations incorporated Federal Acquisition Regulation (FAR) § 52.217-5, which advises bidders that the government may reject an unbalanced bid. The Corps rejected Sawadi's apparent low bids under both solicitations as unbalanced.

A bid that is based on nominal prices for some work and enhanced prices for other work is mathematically unbalanced. A mathematically unbalanced bid cannot be accepted if it is also materially unbalanced, that is, if there is reasonable doubt that

an award based on the bid will result in the lowest cost to the government. DGS Contract Servs., Inc., B-250306, Jan. 15, 1993, 93-1 CPD ¶ 49.

Here, although the solicitations established the same general mowing requirements for each of the base periods and 4 option years, Sawadi bid substantially lower prices for the option years than for the base year. The relevant bids under the two solicitations were as follows:

IFB-0043

	Base	First Option	Second Option	Third Option	Fourth Option	Total
Sawadi	\$59,372	\$41,969	\$30,627	\$32,742	\$31,147	\$195,857
Next Low Bid	\$41,381	\$41,381	\$41,381	\$41,381	\$41,381	\$206,906
Government Estimate	\$39,208	\$39,208	\$39,208	\$39,208	\$39,208	\$196,040

IFB-0044

	Base	First Option	Second Option	Third Option	Fourth Option	Total
Sawadi	\$85,620	\$40,840	\$42,632	\$36,004	\$34,752	\$239,848
Next Low Bid	\$55,745	\$55,745	\$55,745	\$55,745	\$55,745	\$278,725
Government Estimate	\$51,432	\$51,432	\$51,432	\$51,432	\$51,432	\$257,160

The Corps determined that Sawadi's bids were mathematically unbalanced based on the substantial discrepancy between the base and option period prices and the fact that the other bidders bid the same or very similar prices for all periods. The Corps

further determined that Sawadi's bids were materially unbalanced because the bids would not become low until the third option years. Based on a potential for reductions in funding and a history of past performance problems resulting in default terminations, the agency had "serious reservations about the eventual duration of the contracts" and was concerned that it might not exercise the options, in which case awarding a contract to Sawadi would not result in the lowest cost to the government.

Sawadi explains in its protest that its base period prices were higher than its option year prices because it included start-up costs in the base periods, including the purchase of lawn mowers, training, and a factor for the inefficiencies associated with starting a new contract. It concludes that its bids should not have been rejected as unbalanced.

Whatever business reasons are offered to justify a particular bid, the government may not pay more for an item or service than its reasonable value. Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD ¶ 30.¹ Thus, while start-up costs may be factored into a base period price so that a front-loaded base price does not automatically mean that the bid is unbalanced, the base period price may not carry a disproportionate share of the total contract price. Eastex Maritime, Inc., B-256164, May 19, 1994, 94-1 CPD ¶ 340. Except in cases where a contractor could have no use for equipment following contract performance, equipment and start-up costs are expected to be apportioned over the evaluated contract period, i.e., base and option periods together. Accordingly, where a contractor acquires the equipment necessary to perform a service contract, which contract will require the same level of services in each year of performance, and front-loads those costs, we have not considered the bidder's business reasons for front-loading costs as relevant to the question of unbalanced bidding unless the unique nature of the contract or of the equipment would leave the typical bidder with valueless equipment in the event

¹Sawadi also claims that its prices for the base periods were substantially higher than for the option periods because the base period is only 5 months, while the option periods are 12 months, and to account for variations in site conditions and in demand over the life of the contract, which would affect its cost of performance. These explanations are unconvincing since, again, the solicitations established the same general mowing requirements for each of the performance periods. To the extent that Sawadi is questioning the solicitation estimates, Sawadi was required to protest prior to bid opening in order to be timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (1995). In addition, while unanticipated changes in demand or site conditions may occur over time, Sawadi does not explain why this risk was greater at the beginning of the contracts, and it is not apparent to us why this would be the case.

of early termination. See id.; Residential Refuse Removal, Inc., 72 Comp. Gen. 68 (1992), 92-2 CPD ¶ 444; Westbrook Indus., Inc., supra.

Here, although Sawadi argues that there is no resale market for used commercial lawn mower equipment, this does not establish that the equipment will be of no value to Sawadi if the contract is terminated early since nothing in the record demonstrates that Sawadi would not be able to use the equipment on lawn mowing contracts in the future. Thus, Sawadi was required to amortize the cost of the lawn mowing equipment over the evaluated contract period and could not simply seek to recover its costs at the beginning of the contract, and the agency reasonably determined that Sawadi's bids were front-loaded for failing to do so.

In view of the fact that Sawadi's bids did not become low until the third option years, and given the Corps' doubts about whether the option years would be exercised, since intervening events such as a loss of contract funding, a change in mowing requirements or a termination for default could result in the Corps not exercising options, we think the Corps reasonably determined that there was reasonable doubt that an award to Sawadi would result in the lowest overall cost to the government. The Corps therefore properly rejected Sawadi's bids as materially unbalanced. Professional Waste Sys., Inc.; Tri-State Servs. of Texas, 67 Comp. Gen. 68 (1987), 87-2 CPD ¶ 477.

The protests are denied.

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